IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 304 (S/B) of 2003

Dr. Harpal Singh S/o Sri Ratan Singh,
R/o Pantnagar University, Pantnagar,
District Udham Singh Nagar

…….. Petitioner

Versus

1. State of Uttaranchal through its Secretary, Krishi Evam Jalagam Anubhag, Uttaranchal Shasan, District Dehradun
2. G.B. Pant University of Agriculture & Technology, through its Registrar, Pantnagar, Distt. U.S. Nagar
3. Vice Chancellor, G.B. Pant University of Agriculture & Technology, Pantnagar, Distt. U.S. Nagar
4. Chancellor, G.B. Pant University of Agriculture & Technology, Rajbhawan, District Dehradun
5. Chief Personnel Officer, G.B. Pant University of Agriculture & Technology, Pantnagar, Distt. U.S. Nagar

……..Respondents

Sri Sharad Sharma, ld. counsel for the petitioner.
Sri Rajendra Dobhal, Learned counsel for the University.

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: March 28, 2006

By means of this writ petition, the petitioner has prayed for writ of certiorari quashing the orders dated 08.09.2000, 16.02.2002 and 31.05.2002 passed by the respondents annexed as Annexure Nos.4, 5 and 6 to the writ petition respectively.

2. Brief facts of the petition as narrated by the petitioner are that the petitioner after his inductment with the respondents worked sincerely with a clean and inblemished service records. The Government of India vide its order dated 08.08.1980 sent the petitioner on deputation to Algeria in order to satisfy and meet up the purpose of the treaty with the Algeria. The petitioner for

the period of deputation in Algeria availed the extra ordinary leave. The grievance of the petitioner is that for the period of deputation he was deprived of increment and other service benefits which was prejudicial to the petitioner's interest. It has been alleged by him that it was an onerous duty on part of the State that when a delinquent has been sent on deputation to meet the purpose of treaty of the Government of India, it was mandatory on part of the State to have safeguarded the service benefits which were likely to have been accrued to the petitioner had he not availed the extra ordinary leave. The assignment conferred on the petitioner was concluded in March, 1983 and thereafter the petitioner readorned his principal post. The petitioner alongwith other teachers aggrieved by the above made several representations to the Chancellor, but all were in vain. Thereafter, on 06.01.1994, the State Government while exercising its powers under Section 36 of the U.P. Agricultural Universities Act, 1958 (***hereinafter will be referred to as the Act***) took a decision whereby the endeavors had been made to remove the impediments in the area of deputation. The decision of the State has been based on the decision of the Board of University as amended in the U.P. Agricultural University Accounting Code dated 15.06.1968, whereby it was resolved that in the field not covered by the statute or Rules or in the Accounting Code, the Financial Hand Book of the State Government would be applicable, unless the Vice Chancellor modifies the same and the Resolution dated 6.1.1994 has also been accepted by the University. On 08.09.2000, the State Government wrote a letter to the Chancellor whereby the direction has been issued by the State that in the absence of there being any regulation of converting the extra ordinary leave to deputation, the same is not permissible. Thereafter, State of Uttaranchal

vide its letter dated 16.02.2002 written to Vice Chancellor confirmed the action of the State and has declined to grant the benefit of conversion of extra ordinary leave to deputation and by the same letter the direction has been issued for the re-fixation of the post retirement benefits. The board of University in compliance of the order of the State of Uttaranchal dated 16.02.2002 taken a decision on 31.5.2002 whereby the direction has been issued for not granting the benefit of conversion of extra ordinary leave to deputation and a simultaneous direction has been issued for reduction of the service benefits of the retired teachers. Being aggrieved against the orders impugned, the petitioner represented the matter before the Chancellor on 6.11.2002 which remains undecided till date, even after the petitioner's reminder dated 7.4.2003. Feeling aggrieved, the petitioner has come up in the writ petition.

3. We have heard learned counsel for the parties and perused the entire evidence on record.

4. Learned counsel for the petitioner relied on the Resolution dated 6.1.1994 passed by the Committee chaired by A.P.C., U.P. Secretary Agriculture, U.P., Director General, U.P. Agriculture Research Council, Vice Chancellor, Agriculture & Technology University, Vice Vice Chancellor, G.B. Agriculture & Technology University, Vice Chancellor, Chandre Shekhar Ajad Agriculture & Technology University, Agriculture Director, U.P., Lucknow and Secretary U.P., Agriculture Research Council, Lucknow. This Committee is not a statutory committee as we examine that Section 10 of the Act is not contemplated rather Section 10 of the Act constitute a different committee which is called Board at State level. Section 10 of the Act reads as under:-

10. Constitution, Powers and duties of the Board –

(1) The Board shall consist of the following members:-

(a) The Kulpati (Vice Chancellor)
(b) The Secretary to the State Government in the Agriculture Department. Ex-officio;
(c) The Secretary to the State Government in the Finance Department Ex-officio;
(d) in the case of the Govind Ballabh Pant Krishi Evam Prodyogik Vishwavidyalaya, the Secretary to the State Government in the Hill Development Department.]
(e) The Director of Agriculture, Uttar Pradesh. Ex-officio;
(f) The Director of Animal Husbandary, Uttar Pradesh. Ex-officio;
(g) Two members of the Legislative Assembly of the State to be elected by the said Assembly
(h) One member of the Legislative Council of the State to be elected by the said Council;
(i) One representative of the Indian Council of Agricultural Research, and]
(j) One representative of the Indian Council of Agricultural Education; and
(k) One representative of the registered graduates, elected in the manner prescribed.

[1-A Any officer mentioned in clause (b), clause (c) or clause (d) of sub-section (1) may, instead of attending any meeting of the Board himself, depute an officer of his department not below the rank of a Joint Secretary, to attend any such meeting, and an officer so deputed shall also have the right to vote]

(2) The Vice-Chancellor shall be ex-officio Chairman of the Board.

(3) The nomination and election of members of the Board other than ex-officio members shall be notified by the State Government in the Gazette.

(4) The Term of office of members of the Board other than ex-officio members shall be three years commencing from the respective dates of notification of their nomination or election under sub-section (3);

Provided that the term of office of any such member elected or nominated to fill a casual vacancy shall be the residue of his predecessor's term;

[Provided further that a member elected under clause (g) or clause (h) shall cease to be a member of the Board with effect from the date when he ceases to be a member of the Legislative Assembly or the Legislative Council, as the case may be:

Provided also that the Indian Council of Agricultural Research may, at any time, replace its representative specified in clause (j)]

(5) Notwithstanding anything contained in sub-section (4), upon the first constitution of the Board after the eighteenth day of January, 1966, provision shall be made in the Statutes for curtailing the term of the office of some of the members referred to in the said sub-section in order that, as nearly as may be, one-third of the members shall retire every year thereafter.

(6) Members shall serve without pay, but shall be entitled to daily allowance and travel expenses, to be paid from the budget of the University.

(7) The powers and duties of the Board shall be as below:-

(a) to prove budget submitted by the (Kulpati) Vice-Chancellor;

(b) to appoint the members of the academic and administrative staff of the University in the manner prescribed;

(c) to hold and control the property and funds of the University and issue any general directive, in that behalf;

(d) to accept the transfer of any movable or immovable property on behalf of the University.

(e) to administer any funds placed at the disposal of the University for specific purposes;

(f) to invest moneys belonging to the University;

(g) to direct the form and use of the Common Seal of the University;

(h) to appoint such committees, either standing or temporary, as it deems necessary for its proper functioning;

(i) [* * *]

(j) to borrow money for capital improvements and make suitable arrangements for its repayment.

(k) To meet at such time and in such places as its deems necessary, provided however, that it shall hold one regular meeting at least every two months, and provided further that at least one-half of its regular meetings be held at the University; and

(l) To regulate and determine all matters concerning the University in accordance with this Act and the Statutes and to exercise such powers and to discharge such duties as may be conferred or imposed on it by this Act and the Statues.

[(8) Notwithstanding anything contained in sub-section (7), no expenditure in respect of which approval of the State Government is required by this Act or the

Statutes shall be incurred except with such approval previously obtained, and no new post shall be created either in the University or in any institution or research center or research or experiment station maintained or managed by the University, except in accordance with any general or special order of such Government;

Provided that nothing in this sub-section shall apply to a post-

(a) the expenditure on which is to be borne exclusively by and which is filled in accordance with the terms and conditions, if any, laid down by the Central Government or the Indian Council for Agricultural Research, New Delhi; or

(b) created for a period not exceeding six months in the aggregate.]

5. This Committee is not constituted under any provision of the Act but it appears to be a purely Administrative Committee to consider certain objections raised by the certain Professors, Readers or Lecturers who went on abroad and they wanted their period of being abroad not to be treated as extra ordinary leave but to be treated on deputation. The Administrative Committee considered the aforesaid aspect and recommended the Government for its acceptance to Joint Secretary, Government of U.P., Agriculture Department, Civil Secretariat, Section-8, Lucknow, which was pending for issuance of Government Order under Section 37 of the Act. In the meantime, the Vice Chancellors of certain Universities including the Vice Chancellor of the G.B. Pant University treated the period of the petitioner to be on deputation and did not treat it extra ordinary leave. On account of this decision of the Vice Chancellor, certain amount was paid to the petitioner, which is evident from the Annexure No.4 to the writ petition. The Government vide its order dated 8.9.2000 refused to accept the recommendation made by the Administrative Committee dated 06.01.1994. Since this Government Order is prior to that of appointed day, therefore, the

same was equally bound on the G.B. Pant University after the creation of the State of Uttaranchal after the appointed day. However, to be more specified, a Government Order has been issued by the State of Uttaranchal on 16.02.2002 and it has further been stated that the amount which has been deposited by the petitioner towards the pensionery benefits should be returned to the petitioner alongwith simple interest thereon. Thereafter, the Chief Personnel Officer of the University issued the letter dated 31.05.2002 whereby he complied with the directions issued by the Government under Section 36 of the Act and has directed that the contributory deposits of such persons should be returned alongwith simple interest, however those persons who have earned the pension on such contribution, the rest of the amount which is sought to be recovered from them shall be recovered from their pension from the Government Budget.

6. The provisions relating to sending on deputation on abroad was that the person treated to be on deputation which is evident from the permission granted by the Government of India to the petitioner (Annexure No.1). In the said permission letter, it is mentioned that "**If there be no objection to your employer, he may be requested to treat you as on deputation to the foreign assignment with lien retained on the post held by you.**" On the basis of the contract entered with the foreign country, the petitioner went on deputation and this period was to be counted as extra-ordinary leave. Necessary fact is that when a person is on deputation outside the country, his lien will be maintained but a leave has to be granted to him in order to retain his lien and accordingly the extra-ordinary leave was being granted to such Professors, Readers or Lecturers who used to go abroad and in case of petitioner

as well. Since we find that the result is totally non-statutory and it was recommendatory in nature and has been refused the acceptance by the Government, therefore, the period of petitioner while he was on deputation has to be treated as “extra ordinary leave”. In fact in the counter affidavit, it has been brought on record that the petitioner applied for extra-ordinary leave and that has been granted to him.

7. Since the petitioner was on leave, therefore the University wrongly accepted his deputation in view of non-statutory direction which has not been accepted by the Government and which has been communicated to the University vide order dated 08.09.2000 and further clarified by the Uttaranchal Government vide order dated 16.02.2002.

8. Thus, we do not find any illegality or infirmity in the orders passed by the State of Uttaranchal or by State of Uttar Pradesh, which are the orders under Section 37 of the Act. The effect of the order is that the contribution alongwith interest earned thereon made by the petitioner shall be returned and the rest part of the pension which has been paid by the State fund is liable to be returned. Thus, after the refixation, the University if seeks to recover the excess fund against the petitioner, there is nothing wrong. It is not a case of punishment or of any inquiry. It is a case of correction of mistake which does not warrant violation of principles of natural Justice.

9. For the reasons recorded above, we do not find any force in the writ petition. The writ petition is accordingly dismissed. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang